

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT C. MITCHELL, III,

Plaintiff,

Case No. 1:07-cv-92

v

HON. JANET T. NEFF

PATRICIA L. CARUSO, et al.,

Defendants.

ORDER

Plaintiff filed this prisoner civil rights action pursuant to 42 U.S.C. § 1983, alleging that defendants have violated his constitutional rights by the initial enactment and subsequent enforcement of Director's Office Memorandum 2006-14. Defendants filed a motion for summary judgment on the ground that plaintiff failed to exhaust his available administrative remedies. Specifically, defendants contend that plaintiff was required to direct his concerns to the Warden's Forum before filing his federal action. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation, recommending that this Court deny defendants' motion because no administrative remedies were available for the type of claim plaintiff brings. The Magistrate Judge also recommended that this Court deny plaintiff's motion for sanctions.

The matter is presently before the Court on defendants' objections to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections.

Defendants argue that the Magistrate Judge erred in neglecting the fact that the unit representative refused to bring the issue to the Warden's Forum because plaintiff presented it as an "individual complaint." However, the Magistrate Judge properly found that plaintiff "unquestionably challenges the content of the policy, not its particular application." Report & Recommendation at 7.

Defendants also argue that plaintiff's attempt to bring the issue to the Warden's Forum in May 2007 is untimely. The Magistrate Judge properly analyzed this argument. The Magistrate Judge reasoned that the question is not whether plaintiff exhausted the Warden's Forum procedure but whether the procedure was in fact available to him. Because the duly elected unit representatives declined to bring the issue to the Warden's Forum, the Magistrate Judge properly concluded that the Warden's Forum was not an available administrative remedy, either before or after plaintiff filed his federal action. Report & Recommendation at 8-9.

THEREFORE, IT IS ORDERED that the objections (Dkt 42) are DENIED and the Report and Recommendation (Dkt 41) is APPROVED and ADOPTED as the opinion of the Court.

IT IS FURTHER ORDERED that defendants' Motion for Summary Judgment (Dkt 19) is DENIED.

IT IS FURTHER ORDERED that plaintiff's Motion for Sanctions (Dkt 36) is DENIED.

Date: August 28, 2008

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge